

### **REMARKS**

Applicants would like to thank the Examiner for careful consideration of pending application and for allowance of Claims 27, 43 and 44.

Claims 1-10, 12, 13, 18-24 and 26-44 are pending in this application. Independent Claims 1, 26, 26, 28 and 42 has been amended for further clarification. Support for the amendment can be found in the specification as originally filed. No new matter has been added.

#### **Double Patenting**

Claims 1-10, 12, 18-24, 26, 28-34 and 39-42 stand rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1-16 of U.S. Patent No. 6,716,916.

This rejection should be withdrawn in light of the amendments and remarks presented herein.

#### **Rejections under 35 USC 102(b)**

Claims 1, 2, 6-10, 12, 18-24, 26, 28-34 and 39-42 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 6,716,916 to Sun et al. (hereinafter "Sun").

It is well settled that in order for a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in prior art. The disclosure requirement under 35 USC 102 presupposes knowledge of one skilled in art of claimed invention, but such presumed knowledge does not grant license to read into prior art reference teachings that are not there. *See Motorola Inc. v. Interdigital Technology Corp.* 43 USPQ2d 1481 (1997 CAFC).

Sun is directed to a thermoplastic molding composition containing the graft rubber product of a two-step polymerization reaction. In the first step, occurs a free-radical emulsion polymerization of resin-forming vinyl monomers in the presence of

latex rubber using a persulfate containing compound initiator. A redox initiator is then added to the reaction in a second step.

Sun fails to teach or suggest a thermoplastic molding prepared by combining graft rubbers by persulfate initiated and redox initiated polymerization that were prepared separately as recited in amended independent claims 1, 23, 26, 28 and 42, and therefore, does not anticipate the present claimed invention. Sun clearly states that, "in the beginning of the graft polymerisation reaction the persulfate compound is added... after the addition of monomers... the redox initiator is added..." (column 2, lines 6-16) indicating that the process of Sun is directed to a polymerization reaction that occurs in the same vessel in two steps: the persulfate initiator is added (step 1), and after some amount of time, the redox initiator is added (step 2) to the same reaction. This is in stark contrast to amended independent Claims 1, 23, 26, 28 and 42 which clearly recites that "the at least one grafted polymers A) and B) are prepared separately". In other words, the graft rubber components A and B of amended independent Claims 1, 23, 26, 28 and 42 are prepared using both persulfate containing and redox system initiator complexes, however these components are prepared separately, i.e. in different vessels, and combined after polymerization. Sun does not disclose combining graft polymers that are prepared separately, and consequently, fails to disclose every element of the amended independent Claims 1, 23, 26, 28 and 42. Therefore, Sun cannot be relied upon for a rejection under 35 USC 102(b).

Furthermore, the disclosure of Sun provides thermoplastic moldings that are physically different from those of the current claimed invention. The Applicants invention is directed to a thermoplastic molding that has "high strength and reduced opacity" (See Abstract). While Sun does not provide a measure of opacity for thermoplastic moldings made as disclosed, the notched impact strength at room temperature (RT) determined using the ISO 1801A method for each example molding composition is reported to be  $> 70 \text{ kJ/m}^2$  (See Table 1 of Sun). In contrast, the notched impact strength of the thermoplastic compositions of amended independent Claim 1 (examples 1-50) at room temperature determined using the ISO 1801A method are

from 10.1 to 28.1 kJ/m<sup>2</sup> (See Table 2 of present application). The difference in notched impact strength clearly shows that the thermoplastic moldings of Sun are physically different than those of the present claimed invention, and cannot anticipate independent Claims 1, 23, 26, 28 and 42.

Accordingly, Sun fails to anticipate amended independent Claims 1, 23, 26, 28 and 42 as Sun fails to disclose the thermoplastic compositions of and provide thermoplastic moldings with different characteristics from those recited in amended independent Claims 1, 23, 26, 28, and 42. Reconsideration is respectfully requested.

Claims 2, 6-10, 12, 18-22, Claim 24, and Claims 29-34 and 39-42 either directly or indirectly depend from and add further limitation to amended independent Claims 1, 23, and 28 respectively and are deemed allowable for at least the reasons in connection with amended independent Claims 1, 23, and 28, respectively.

#### Rejections under 35 USC 103(a)

Claims 3-5 stand rejected under 35 USC 103(a) as being unpatentable over Sun.

It is well settled that to establish a *prima facie* case of obviousness, the USPTO must satisfy all of the following requirements. First, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or to combine references. *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Second, the proposed modification must have had a reasonable expectation of success, as determined from the vantage point of one of ordinary skill in the art at the time the invention was made. *Amgen v. Chugai Pharmaceutical Co.* 18 USPQ 2d 1016, 1023 (Fed Cir, 1991), *cert. denied* 502 U.S. 856 (1991). Third, the prior art reference or combination of references must teach or suggest all of the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496, (CCPA 1970).

Claims 3-5 either directly or indirectly depend from and add further limitation to amended Independent Claim 1. As previously discussed, amended independent Claim 1 further defines that the graft rubbers of components A) and B) are produced

separately and is distinguishable from Sun for in view of the claim amendment. Since dependent Claims 3-5 depend from and add further limitations to amended independent Claim 1, Sun fails to teach or suggest all the limitations of dependent Claims 3-5 and cannot be relied upon for a 35 USC 103(a) rejection. Reconsideration is respectfully requested.

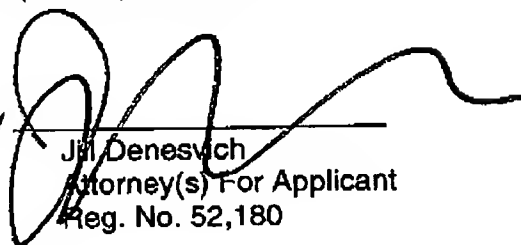
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In view of the above amendments and remarks, Applicant submits that the claims are in condition for allowance and respectfully request that the Examiner reconsider and allow them.

Respectfully submitted,

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